

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Applicant: Christopher James NASON

Conf. no.: 2750

Serial No.: 09/800,112

Art Unit: 2145

Filed : March 5, 2001

Examiner: Thomas Duong

For : METHOD OF CONTROLLING TELEPHONE CONNECTIONS
FOR INTERNET PROTOCOL COMMUNICATIONS

Board of Patent Appeals and Interferences
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

This is a Reply to the Supplemental Examiner's Answer mailed on October 4, 2006.

The Examiner has erred in considering "an encapsulated non-IP message" to be the same as "an IP message", suggesting that there is no difference between an IP message, and an encapsulated non-IP message.

There is quite an important distinction between an IP message and a non-IP message. While the method of communication routes IP messages between an IP phone and a network implemented PBX, what is encapsulated within the message is a key to extending call control functionality from legacy-PBX systems, that is, non-IP systems, to Ethernet or LAN

implemented PBX systems, a functionality the invention achieves in a way not taught or suggested in the cited prior art.

The Examiner alleges that it is well known that “there is a Protocol field, which specifies the type of the encapsulated protocol, in the IP packet header”, and references “TCP/IP Illustrated, Vol. 1-The Protocols” for support for asserting that the protocol field identifies “which protocol gave the data for IP to send”. However, this does not equate with identifying whether a message is IP or non-IP. TCP/IP is a suite of internet protocols where the protocol field identifies which higher level TCP/IP protocol sent the data in question, and this presumes the protocol is an IP protocol. Of course, this bears no relation to whether a message is non-IP. Claim 22 specifically requires the ability to identify whether a message is IP or non-IP, and without this ability, it is not possible to extend call control functionality from legacy based PBX systems (non-IP) to Ethernet or LAN-implemented PBX systems (IP).

The Examiner has apparently failed to give due consideration to the plain words of the claim, relative to what is encapsulated within the message, and refused to acknowledge that the applicants system is not found, taught or suggested in the prior art.

While the examiner took issue with the legal standards stated in the Appeal Brief, these were included to provide a measure against which obviousness is to be determined. Too often, subjective criteria creep into the analysis, and it is these legal standards, not the examiners’ opinion, which determine if the claims are patentable. The Examiners’ Answer illustrates how a speculative interpretation of the prior art has been used to reject the present claims, ignoring the legal standards that should have been applied.

The Examiner recites Matsumoto as teaching a “PBX 40 and the IP phone device 50...”, yet there is no discussion in Matsumoto of integrating legacy PBX systems with Ethernet or LAN implemented PBX systems, and nothing to teach or suggest the use of a Protocol Header which includes an indication of Protocol Type for denoting whether the message is an IP message or an encapsulated non- IP message. Nor does Matsumoto discuss any other means to distinguish IP from non-IP messages, and therefore there is nothing to lead one skilled in the art to do so. Further, Thornton also fails to teach or suggest use of a Protocol Header which includes an indication of Protocol Type for denoting whether the message is an IP message or an encapsulated non- IP message. That suggestion is only found in the applicants’ disclosure, not in the cited prior art.

The speculative reference to a motivation to combine to enable a “VOIP structure that warrants widespread adoption and substantial cost savings that could well accrue from its use”, is no motivation at all. It is just rhetoric that cannot even be said to be an invitation to experiment. It certainly does not lead one to the applicants’ invention, and cannot be a basis for finding the claimed invention to be obvious. Even if accepted, this motivation has no relevance to whether the combination specifically teaches or suggests what is in claim 22: “wherein the Protocol Header includes an indication of Protocol Type for denoting whether the message is an IP message or an encapsulated non- IP message”.

Since there is nothing in the prior art cited that teaches or suggests use of a Protocol Header that includes an indication of Protocol Type for denoting whether the message is an IP message or an encapsulated non- IP message, which leads to extending call control functionality to legacy PBX systems, these claims are clearly patentable over the cited art.

Given the above, the claims meet the statutory requirements for patentability, and reversal of the rejection is respectfully requested.

Dated: November 27, 2006

Respectfully submitted,

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